

Article 58.

Records, Tapes and Other Recorded Devices.

§ 14-432. Definitions.

The following definitions apply in this Article:

- (1) "Article" means the tangible medium upon which sounds or images are recorded or otherwise stored, including any original phonograph record, disc, tape, audio or video cassette, wire, film, or other medium now known or later developed on which sounds or images, or both, can be recorded or otherwise stored, or any copy or reproduction which duplicates, in whole or in part, the original.
- (2) "Fixed" means that the work has been recorded in a tangible medium of expression, by or under the authority of the author, and its embodiment is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds or images, or both, that are being transmitted is "fixed" for the purposes of this section if a fixation of the work is being made simultaneously with its transmission.
- (3) "Owner" means the person who owns the sounds fixed in any master phonograph record, master disc, master tape, master film, or other device used for reproducing recorded sounds on phonograph records, discs, tapes, films, or other articles on which sound is or can be recorded and from which the transferred sounds are directly or indirectly derived, or the person who owns the rights to record or authorize the recording of a live performance. (1973, c. 1279, s. 1; 1989, c. 589, s. 1; 2003-159, s. 1.)

§ 14-433. Recording of live performances or recorded sounds and distribution, etc., of such recordings unlawful in certain circumstances.

- (a) It shall be unlawful for any person to:
 - (1) Knowingly transfer or cause to be transferred, directly or indirectly by any means, any sounds recorded on a phonograph record, disc, wire, tape, film or other article on which sounds are recorded, with the intent to sell or cause to be sold, or to use or cause to be used for profit through public performance, such article on which sounds are so transferred, without consent of the, owner.
 - (2) Manufacture, distribute, wholesale or transport any article for profit, or possess for these purposes with the knowledge that the sounds recorded on the article were transferred in violation of subdivision (a)(1) of this section.
 - (3) Recodified as G.S. 14-433(a1)(1) by Session Laws 2003-159, s. 2.
 - (4) Recodified as G.S. 14-433(a1)(2) by Session Laws 2003-159, s. 2.
- (a1) It shall be unlawful for any person to:
 - (1) Knowingly transfer or cause to be transferred, directly or indirectly by any means, any sounds at a live performance, with the intent to sell or cause to be sold, or to use or cause to be used for profit through public performance, the article on which sounds are so transferred, without consent of the owner.

(2) Manufacture, distribute, transport or wholesale any article for profit, or possess for those purposes with the knowledge that the sounds recorded on the article were transferred in violation of subdivision (a)(1) of this section.

(b) Subdivisions (a)(1) and (a)(2) of this section shall apply only to sound recordings that were initially fixed prior to February 15, 1972. Federal copyright law, 17 U.S.C. § 101 et seq., preempts State prosecution of the acts described in subdivisions (a)(1) and (a)(2) with respect to sound recordings initially fixed on or after February 15, 1972.

(c) This section shall not apply to any person engaged in webcasting or radio or television broadcasting who transfers, or causes to be transferred, any such sounds other than from the sound track of a motion picture intended for, or in connection with webcast, broadcast or telecast transmission or related uses, or for archival purposes. An Internet service provider who is solely providing a conduit for access to the Internet, shall not be deemed to be using, or causing to be used, recordings that may be transferred over the Internet by third parties in violation of this Article. (1973, c. 1279, s. 1; 1989, c. 589, s. 1; 2003-159, s. 2.)

§ 14-434. Retailing, etc., of certain recorded devices unlawful.

It shall be unlawful for any person to knowingly retail, advertise or offer for sale or resale, sell or resell or cause the sale or resale, rent or cause to rent, or possess for any of these purposes any article that has been produced, manufactured, distributed, or acquired at wholesale in violation of any provision of this Chapter. (1973, c. 1279, s. 1; 1989, c. 589, s. 1.)

§ 14-435. Recorded devices to show true name and address of manufacturer.

(a) A person is guilty of failure to disclose the origin of an article when, for commercial advantage or private financial gain, the person knowingly advertises or offers for sale or resale, or sells or resells, or causes the rental, sale, or resale, or rents, or manufactures, or possesses for these purposes, any article, the packaging, cover, box, jacket, or label of which does not clearly and conspicuously disclose the actual true name and address of the manufacturer of the article and the name of the actual author, artist, performer, producer, programmer, or group.

(b) This section does not require the original manufacturer or authorized licensees of software producers to disclose the contributing authors or programmers. As used in this section, the term "manufacturer" shall not include the manufacturer of the article's packaging, cover, box, jacket, or label itself. (1973, c. 1279, s. 1; 1989, c. 589, s. 1; 2003-159, s. 3.)

§ 14-436. Recorded devices; civil action for damages.

Any owner of an article as defined in this Article whose work is allegedly the subject of a violation of G.S. 14-433 or G.S. 14-434, shall have a cause of action in the courts of this State for all damages resulting from the violation, including actual, compensatory and incidental damages. (1973, c. 1279, s. 1; 1989, c. 589, s. 1; 2003-159, s. 4.)

§ 14-437. Violation of Article; penalties.

(a) Every individual act in contravention of the provisions of this Article shall constitute a Class 1 misdemeanor, except that the offense is a Class I felony with a maximum fine of one hundred fifty thousand dollars (\$150,000) if (i) the offense involves at least 100 unauthorized

articles during any 180-day period, or (ii) is a third or subsequent conviction for an offense that involves at least 26 unauthorized articles during any 180-day period.

(b) If a person is convicted of any violation under this Article, the court, in its judgment of conviction, shall order the forfeiture and destruction or other disposition of:

- (1) All infringing articles; and
- (2) All implements, devices and equipment used or intended to be used in the manufacture of the infringing articles. (1973, c. 1279, s. 1; 1989, c. 589, s. 1; 1993, c. 539, ss. 291, 1246; 1994, Ex. Sess., c. 24, s. 14(c); 2003-159, s. 5.)

§ 14-438. Reserved for future codification purposes.

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